IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 239 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL PRAHLADBHAI HIRABHAI

Versus

PATEL HARIBHAI JETHABHAI

Appearance:

1. Criminal Revision Application No. 239 of 1999

MR MEHUL SHARAD SHAH for Petitioner No. 1

..... for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 04/10/2004

ORAL JUDGEMENT

1. Heard Mr. Mehul Sharad Shah for the petitioner-revisionist.

2. This revision application is filed by the private party against the judgment and order dated 24.2.1999 delivered by the ld. Addl. Sessions Judge, Mehsana, camp at Patan acquitting the accused i.e. present opponents no. 1 and 2 for the charges levelled against them under sec. 306, 498(A) and 114 of Indian Penal Code.

3. Having gone through the record, it appears that the conclusion of the ld. trial judge is based on sound appreciation of evidence led by the prosecution. It is pertinent to note that at inception accidental death under sec. 174 of Code of Criminal Procedure bearing No. 7/88 was recorded and enquired into, in respect of death of Sitaben, wife of present opponent no. 1 and daughter-in-law of opponent no. 2. The incident occurred on 23.11.1988, wherein deceased Sitaben poured kerosene and ignited herself ultimately succumbing to burn injuries and died. Complaint (FIR) came to be filed by Shri C.R. Shah, Sub Divisional Police Officer at the end of enquiry under Sec. 174 of the Criminal Procedure Code. Though the witnesses examined by the prosecution who were relatives of the deceased tried to support the prosecution case, but the ld. trial judge came to the conclusion that very important witness Babubhai Bhaichandbhai Sevala common relative of both the parties could not be examined and ultimately, the ld. trial judge came to the conclusion that even if it is proved that deceased Sitaben died of suicide, there was no cogent evidence to come to the conclusion that accused instigated and had driven Sitaben on account of cruelty to commit suicide. The letter at ex. 44 alleged to have been written by the accused incriminating him could not be proved by the prosecution. It was also observed by ld. judge that P.W. 4 to 9 and P.W. 11 were examined by the prosecution, who were relatives of deceased, but they stated about cruelty after the incident and did nothing before that and therefore they were not believed. One eye witness of incident, out of two was examined and he did not support the prosecution case, nor any of the panchnama drawn could be proved.

4. Going through entirely judgment of the ld. trial judge along with the contentions of ld. advocate for the petitioner, it appears that no fault can be found out in the matter of appreciation of evidence by the ld. trial judge nor in respect of his conclusion. Under sec. 401(3) of the Code of Criminal Procedure, this court is not authorized to convert acquittal into one of conviction. At the most, the matter can be remanded to

the ld. trial judge for re-trial, but there are no reasons for directing re-trial in the case.

5. Ld. APP Mr. HL Jani was heard and vide order dated 6.9.2004, he was directed to ascertain whether State has intended to file any appeal in the matter. He submitted that on record, he found a letter of Ld. APP opining not to prefer an appeal. However, the fact stands that the State has not preferred any appeal.

6. In this view of the matter, this revision application stands dismissed.

(J.R. VORA, J.)
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